

HOUSE APPROPRIATIONS AND FINANCE COMMITTEE SUBSTITUTE FOR  
HOUSE JUDICIARY COMMITTEE SUBSTITUTE FOR  
HOUSE BILLS 151 & 614

**49TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2009**

AN ACT

RELATING TO ETHICS; ENACTING THE STATE ETHICS COMMISSION ACT;  
CREATING THE STATE ETHICS COMMISSION; PROVIDING POWERS AND  
DUTIES; ALLOWING ANNUAL ETHICS TRAINING AND THE PUBLICATION OF  
ETHICS GUIDES; REQUIRING THE DEVELOPMENT OF A PROPOSED ETHICS  
CODE FOR THE EXECUTIVE BRANCH; GRANTING SUBPOENA POWERS;  
ALLOWING ISSUANCE OF ADVISORY OPINIONS RELATED TO CERTAIN  
ETHICS VIOLATIONS; PROVIDING FOR THE FILING OF COMPLAINTS  
AGAINST STATE OFFICIALS, STATE EMPLOYEES, GOVERNMENT  
CONTRACTORS AND LOBBYISTS FOR CERTAIN ETHICS VIOLATIONS;  
ESTABLISHING INVESTIGATIONS OF COMPLAINTS FOR CERTAIN ETHICS  
VIOLATIONS; PROVIDING FOR REFERRALS OF COMPLAINTS AGAINST  
LEGISLATORS; PROVIDING PENALTIES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. SHORT TITLE.--This act may be cited as the

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1 "State Ethics Commission Act".

2 Section 2. DEFINITIONS.--As used in the State Ethics  
3 Commission Act:

4 A. "commission" means the state ethics commission;

5 B. "commissioner" means a person appointed to the  
6 state ethics commission;

7 C. "ethics violation" means any action that amounts  
8 to a violation of the Gift Act, the Governmental Conduct Act,  
9 the Procurement Code, the Lobbyist Regulation Act, the  
10 Financial Disclosure Act, Chapter 1, Article 19 NMSA 1978 or  
11 any code of ethics adopted pursuant to those laws or Section 4  
12 of the State Ethics Commission Act;

13 D. "government contractor" means a person who has a  
14 contract with a state agency pursuant to the Procurement Code.  
15 "Government contractor" also includes any person who has  
16 submitted a competitive sealed proposal or competitive sealed  
17 bid for a contract with a state agency;

18 E. "legislative body" means the house of  
19 representatives or the senate;

20 F. "lobbying" means attempting to influence:

21 (1) a decision related to any matter to be  
22 considered or being considered by the legislative branch of  
23 state government or any legislative committee or to any  
24 legislative matter requiring action by the governor or awaiting  
25 action by the governor; or

.178701.3

1 (2) an official action;

2 G. "lobbyist" means a person who is compensated for  
3 the specific purpose of lobbying; who is designated by an  
4 interest group or organization to represent it on a substantial  
5 or regular basis for the purpose of lobbying; or who, in the  
6 course of the person's employment, is engaged in lobbying on a  
7 substantial or regular basis. "Lobbyist" does not include:

8 (1) a person who appears on the person's own  
9 behalf in connection with legislation or an official action;

10 (2) an elected or appointed officer of the  
11 state, a political subdivision of the state or an Indian  
12 nation, tribe or pueblo who is acting in the officer's official  
13 capacity;

14 (3) an employee of the state or a political  
15 subdivision of the state, specifically designated by an elected  
16 or appointed officer, who appears before a legislative  
17 committee or in a rulemaking proceeding only to explain the  
18 effect of legislation or a rule on that employee's agency or  
19 political subdivision; provided that the elected or appointed  
20 officer keeps the designation for public inspection and files  
21 it with the secretary of state;

22 (4) a designated member of the staff of an  
23 elected state official; provided that the elected state  
24 official keeps the designation for public inspection and files  
25 it with the secretary of state;

.178701.3

1 (5) a legislator or legislative staff member;

2 (6) a witness called by a legislative  
3 committee or administrative agency to appear before it in  
4 connection with legislation or an official action;

5 (7) a person who provides only oral or written  
6 public testimony in connection with a legislative committee or  
7 in a rulemaking proceeding and whose name and the interest on  
8 behalf of which the person testifies have been clearly and  
9 publicly identified; or

10 (8) a publisher, owner or employee of the  
11 print media, radio or television, while gathering or  
12 disseminating news or editorial comment to the general public  
13 in the ordinary course of business;

14 H. "official action" means an action or nonaction  
15 of a state official or state agency acting in a rulemaking  
16 proceeding;

17 I. "political party" means any qualified political  
18 party, any of whose candidates received at least five percent  
19 of the total number of votes cast at the last preceding general  
20 election for the office of governor or president of the United  
21 States, as the case may be, and whose membership totals not  
22 less than one-third of one percent of the statewide registered  
23 voter file on the day of the governor's primary election  
24 proclamation;

25 J. "respondent" means a state official, state

1 employee, government contractor or lobbyist who is the subject  
2 of a complaint filed with the commission;

3 K. "state agency" means any department, commission,  
4 council, board, committee, institution, agency, government  
5 corporation, educational institution or official of the  
6 executive, legislative or judicial branch of government of the  
7 state;

8 L. "state employee" means an employee of the  
9 executive, legislative or judicial branch of the state; and

10 M. "state official" means a person elected or  
11 appointed to an office of the executive, judicial or  
12 legislative branch of the state.

13 Section 3. STATE ETHICS COMMISSION CREATED--MEMBERSHIP--  
14 TERMS--REMOVAL.--

15 A. The "state ethics commission" is created as an  
16 adjunct agency. The commission consists of the following seven  
17 commissioners:

18 (1) one commissioner from each of the  
19 congressional districts appointed by the governor, no more than  
20 two of whom shall be of the same political party and one of  
21 whom shall be named from a list of five names provided by the  
22 floor leaders of the house of representatives and the senate  
23 who are not members of the governor's political party;

24 (2) one commissioner appointed by the  
25 president pro tempore of the senate;

.178701.3

1 (3) one commissioner appointed by the minority  
2 floor leader of the senate;

3 (4) one commissioner appointed by the speaker  
4 of the house of representatives; and

5 (5) one commissioner appointed by the minority  
6 floor leader of the house of representatives.

7 B. Appointments shall be made in a manner that  
8 meets the following requirements:

9 (1) all commissioners shall be residents of  
10 New Mexico;

11 (2) no more than four commissioners shall be  
12 registered members of the same political party and no person  
13 whose party registration changed in the year prior to  
14 appointment shall be appointed to the commission;

15 (3) the appointing authorities shall give due  
16 consideration to achieving geographical representation from  
17 across the state; and

18 (4) each appointing authority shall file  
19 letters of appointment with the secretary of state.

20 C. Commissioners shall be appointed for staggered  
21 terms of four years beginning July 1, 2009. Upon initial  
22 appointment of the commission, the commissioners shall draw  
23 lots to determine which two commissioners will serve an initial  
24 term of two years, which two commissioners will serve an  
25 initial term of three years and which three commissioners will

1 serve an initial term of four years; thereafter, all  
2 commissioners shall serve four-year terms. Members shall serve  
3 until their successors are appointed and qualified. A person  
4 shall not serve as a commissioner for more than two consecutive  
5 terms.

6 D. Before entering upon the duties of the office,  
7 each commissioner shall review the responsibilities of and the  
8 consequences of failure to comply with the State Ethics  
9 Commission Act and shall take the oath of office that the  
10 commissioner will support the constitution of the United States  
11 and the constitution and laws of this state, and that the  
12 commissioner will faithfully and impartially discharge the  
13 duties of the office to the best of the commissioner's ability.  
14 A record of the oath shall be filed with the office of the  
15 secretary of state.

16 E. The commission shall select a chair, vice chair  
17 and other officers it deems necessary.

18 F. Four commissioners constitute a quorum for the  
19 transaction of business. No action shall be taken by the  
20 commission unless at least four members concur, including at  
21 least two members from each of the two largest major political  
22 parties.

23 G. A vacancy on the commission shall be filled by  
24 appointment by the original appointing authority for the  
25 remainder of the unexpired term. A commissioner may be removed

.178701.3

1 only for incompetence, neglect of duty or malfeasance in  
2 office. A proceeding for the removal of a commissioner may be  
3 commenced by the commission or by the attorney general upon the  
4 request of the commission. The supreme court of the state of  
5 New Mexico has exclusive jurisdiction over proceedings to  
6 remove commissioners, and its decision shall be final. A  
7 commissioner shall be given notice of hearing and an  
8 opportunity to be heard before the commissioner is removed.

9 H. During a commissioner's term, a commissioner  
10 shall not:

11 (1) hold or seek an elective public office, an  
12 appointed public position or an office in a political party; or

13 (2) be a state employee, government contractor  
14 or lobbyist.

15 I. Commissioners shall disqualify themselves from a  
16 commission proceeding when they have a conflict of interest.

17 Commissioners who disqualify themselves shall state the reason  
18 for the disqualification. If the propriety of a commissioner's  
19 participation in a particular matter is questioned due to a  
20 conflict of interest, the commission may disqualify that  
21 commissioner from participation in a commission proceeding. A  
22 disqualified commissioner shall not participate in any  
23 proceedings with reference to the matter from which the  
24 commissioner is disqualified, and the commissioner shall be  
25 excused from that portion of any meeting at which the matter is

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1 discussed. If four or more commissioners are disqualified from  
2 participating in a proceeding, the remaining commissioners  
3 shall appoint temporary commissioners to participate in that  
4 proceeding. Appointments of temporary commissioners shall be  
5 made by majority vote of the remaining commissioners and in  
6 accordance with the geographical representation and political  
7 party membership requirements of Subsections A and B of this  
8 section.

9 J. For a period of one calendar year following the  
10 expiration of a commissioner's term or following the  
11 resignation or removal of a commissioner, that commissioner  
12 shall not:

13 (1) hold or seek an elective public office, an  
14 appointed public position or public employment;

15 (2) represent a respondent, unless appearing  
16 on the commissioner's own behalf; or

17 (3) accept employment or otherwise provide  
18 services to a person that is a respondent, unless the  
19 commissioner accepted employment or provided services to the  
20 person prior to the filing of a complaint against the person.

21 K. Commissioners are entitled to receive per diem  
22 and mileage as provided in the Per Diem and Mileage Act and  
23 shall receive no other compensation, perquisite or allowance.

24 L. The commission shall meet as necessary to carry  
25 out its duties pursuant to the State Ethics Commission Act.

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1           Section 4. COMMISSION--POWERS--DUTIES.--

2           A. The commission shall:

3                   (1) receive and investigate complaints  
4 alleging ethics violations against state officials, state  
5 employees, government contractors and lobbyists;

6                   (2) report findings based on clear and  
7 convincing evidence that a respondent's conduct constituted an  
8 ethics violation to the respondent's appointing authority,  
9 employer, appropriate state agency or appropriate legislative  
10 ethics committee;

11                  (3) compile, index, maintain and provide  
12 public access to all advisory opinions, complaints and reports  
13 required to be made public pursuant to the State Ethics  
14 Commission Act;

15                  (4) draft a proposed code of ethics for all  
16 state officials and state employees of the executive branch and  
17 submit the proposed code to each elected state official of the  
18 executive branch for adoption;

19                  (5) develop, adopt and promulgate all  
20 procedural rules necessary for the commission to implement and  
21 administer the provisions of the State Ethics Commission Act,  
22 including rules of procedure for investigations, hearings and  
23 meetings conducted by the commission;

24                  (6) employ an executive director, who shall be  
25 an attorney;

.178701.3

1 (7) submit an annual report of its activities,  
2 including any recommendations regarding state ethics laws or  
3 the scope of its powers and duties, in December of each year to  
4 the governor, the legislature and the chief justice of the  
5 supreme court; and

6 (8) promulgate rules for the recusal of  
7 members to avoid the appearance of impropriety and conflicts of  
8 interest.

9 B. The commission may:

10 (1) initiate complaints alleging ethics  
11 violations against state officials, state employees, government  
12 contractors and lobbyists;

13 (2) issue public reprimands or censures or  
14 recommend disciplinary actions in accordance with the  
15 provisions of the State Ethics Commission Act for ethics  
16 violations committed by state officials of the executive branch  
17 and state employees;

18 (3) pursuant to governing court rules and  
19 Section 7 of the State Ethics Commission Act, request that the  
20 district court issue subpoenas under seal as necessary to  
21 require the attendance of witnesses and the production of  
22 accounts, books, papers, records and other documents relevant  
23 to an investigation conducted by the commission;

24 (4) issue advisory opinions to state  
25 officials, state employees, government contractors and

.178701.3

1 lobbyists in accordance with the provisions of the State Ethics  
2 Commission Act;

3 (5) compile, adopt, publish and provide to all  
4 state officials, state employees, government contractors and  
5 lobbyists an ethics guide that clearly and plainly explains the  
6 ethics requirements set forth in state law;

7 (6) compile, adopt, publish and provide to all  
8 state officials, state employees, government contractors and  
9 lobbyists a business ethics guide that clearly and plainly  
10 explains the ethics requirements set forth in state law as they  
11 relate to conducting business with the state;

12 (7) offer annual ethics training to all state  
13 officials, state employees, government contractors and  
14 lobbyists; and

15 (8) contract for the provisions of goods and  
16 services.

17 Section 5. EXECUTIVE DIRECTOR--DUTIES--EMPLOYMENT.--

18 A. The executive director of the commission shall:

19 (1) be employed by, report directly to and  
20 serve at the pleasure of the commission;

21 (2) perform all investigations on behalf of  
22 the commission;

23 (3) bring complaints and investigation results  
24 before the commission for consideration;

25 (4) prepare an annual budget for the

.178701.3

1 commission and submit it to the commission for approval; and

2 (5) make recommendations to the commission of  
3 proposed rules or legislative changes needed to provide better  
4 administration of the State Ethics Commission Act.

5 B. The executive director may hire a general  
6 counsel for the commission and all other personnel as may be  
7 necessary to carry out the responsibilities of the commission.

8 C. The executive director of the commission may  
9 administer oaths and take depositions to the same extent and  
10 subject to the same limitations as would apply if the  
11 deposition were held pursuant to the discovery rules in a civil  
12 action in the district court.

13 D. For a period of one calendar year immediately  
14 following the executive director's employment with the  
15 commission, the executive director shall not:

16 (1) hold or seek an elective public office, an  
17 appointed public position or public employment;

18 (2) represent a respondent, unless appearing  
19 on the executive director's own behalf; or

20 (3) accept employment or otherwise provide  
21 services to a person that is a respondent, unless the executive  
22 director accepted employment or provided services to the person  
23 prior to the filing of a complaint against the person.

24 Section 6. COMMISSION--ADVISORY OPINIONS.--

25 A. The commission may issue an advisory opinion to

.178701.3

1 a state official, state employee, government contractor or  
2 lobbyist on matters relating to a specific set of circumstances  
3 involving ethics violations. Unless amended or revoked, an  
4 advisory opinion issued by the commission shall be binding on  
5 the commission in any subsequent commission proceedings  
6 concerning any person who acted in good faith and in reliance  
7 upon the opinion.

8 B. The commission shall promulgate rules for  
9 issuing advisory opinions; provided that:

10 (1) advisory opinions shall be requested in  
11 writing and identify a specific set of circumstances involving  
12 an ethics issue;

13 (2) all requests to the commission for  
14 advisory opinions shall be confidential; and

15 (3) the commission shall publish an advisory  
16 opinion after omitting the name of the requesting state  
17 official, state employee, government contractor or lobbyist.

18 C. An advisory opinion shall be issued within sixty  
19 days of receipt of the request; provided that if the opinion is  
20 not issued within the required time, the commission shall  
21 notify the requester of the delay and shall provide additional  
22 notification every thirty days until the opinion is issued.

23 Section 7. COMMISSION--COMPLAINTS--INVESTIGATIONS--  
24 FINDINGS AND RECOMMENDATIONS--REPORTS REQUIRED--CRIMINAL  
25 REFERRAL REQUIRED.--

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1           A. A complaint of an alleged ethics violation  
2 committed by a state official, state employee, government  
3 contractor or lobbyist may be:

4                   (1) filed with the commission by a person who  
5 has actual knowledge of an alleged ethics violation; or

6                   (2) initiated by the commission upon receipt  
7 of evidence deemed sufficient by the commission of an alleged  
8 ethics violation.

9           B. A person who files a complaint with the  
10 commission shall sign the complaint under penalty of false  
11 statement and set forth in detail the specific charges against  
12 the state official, state employee, government contractor or  
13 lobbyist and the factual allegations that support the charges.  
14 Together with the complaint, a person shall submit to the  
15 commission any evidence that the person has that supports the  
16 complaint. Evidence may include documents, records and the  
17 names of witnesses. The commission may prescribe the forms on  
18 which complaints are to be filed.

19           C. The chair of the commission shall sign a  
20 complaint initiated by the commission, and the complaint shall  
21 set forth in detail the specific charges against the state  
22 official, state employee, government contractor or lobbyist and  
23 the factual allegations that support the charges.

24           D. Upon receipt of a complaint filed or initiated  
25 pursuant to this section, the executive director of the

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1 commission shall examine the complaint and make an initial  
2 determination as to whether the conduct alleged in the  
3 complaint is within the jurisdiction of the commission and  
4 warrants investigation. If a complaint is filed against a  
5 judge or justice, the complaint shall immediately be referred  
6 to the judicial standards commission. The executive director  
7 shall bring all other complaints before the commission and make  
8 recommendations to the commission regarding whether to proceed  
9 with investigations of the complaints.

10 E. The commission may dismiss complaints that are  
11 frivolous, unfounded or outside the jurisdiction of the  
12 commission. If the commission determines that there is  
13 sufficient cause to proceed with the investigation of a  
14 complaint, the executive director shall initiate an  
15 investigation to determine whether clear and convincing  
16 evidence may exist to believe that the respondent's alleged  
17 conduct constituted an ethics violation. If the complaint is  
18 dismissed, the executive director shall promptly notify the  
19 person who filed the complaint and the respondent. If the  
20 complaint will be investigated, the executive director shall  
21 notify the respondent of the complaint and the specific  
22 allegations. A state official or state employee who is a  
23 respondent shall be entitled to representation by the risk  
24 management division of the general services department;  
25 provided, however, that if the respondent is found to have

.178701.3

1 committed an ethics violation, the respondent shall reimburse  
2 the division for the respondent's equitable share of the total  
3 reasonable attorney fees and costs expended.

4 F. As part of the investigation, the executive  
5 director may interview witnesses and examine books, documents,  
6 records and papers reasonably related to the complaint. All  
7 testimony in an investigation shall be under oath, and the  
8 respondent shall have the right to be represented by legal  
9 counsel. If the executive director determines that the  
10 testimony of any person or the production of books, documents,  
11 records or papers is required in the investigation, the  
12 executive director shall request the commission to request the  
13 district court to issue the appropriate subpoena under seal.

14 G. In any investigation or hearing held under the  
15 provisions of this section, the commission shall have the power  
16 to administer oaths and, with the concurrence of at least four  
17 of the members of the commission, may petition a district  
18 court, under seal and, upon a showing of probable cause, to  
19 subpoena witnesses, compel their attendance and examine them  
20 under oath or affirmation and to require the production of any  
21 books, records, documents or other evidence that it deems  
22 relevant or material to an investigation. Any challenge to a  
23 subpoena shall be heard by the district court in a confidential  
24 proceeding.

25 H. The executive director shall present a written

.178701.3

1 report of the investigation to the commission. The respondent  
2 and the respondent's legal counsel may attend and participate  
3 in the meeting, and the executive director shall provide  
4 reasonable notice to the respondent in writing of the date,  
5 time and place of the meeting. Notwithstanding the provisions  
6 of the Open Meetings Act, meetings of the commission held for  
7 the purpose of an investigation conducted pursuant to this  
8 section are closed to the public.

9 I. Except as provided in Section 8 of the State  
10 Ethics Commission Act, if the commission finds that, based on  
11 the facts in the investigation report and the facts alleged in  
12 the complaint, clear and convincing evidence exists to believe  
13 that the respondent's alleged conduct constituted an ethics  
14 violation, the commission shall issue a written report of its  
15 findings. The report shall include findings of fact and  
16 conclusions of law. If the respondent is a state official of  
17 the executive branch or state employee of the executive branch,  
18 the written report may include a public reprimand or censure  
19 regarding the respondent's behavior or recommendations for  
20 disciplinary action against the respondent.

21 J. The commission shall publicly disclose a report  
22 issued pursuant to Subsection I of this section. The  
23 commission shall also transmit the report and provide all  
24 evidence collected during its investigation to the respondent,  
25 the attorney general and the:

.178701.3

1 (1) respondent's appointing authority if the  
 2 respondent is a state official appointed to an office of the  
 3 executive branch;

4 (2) appropriate state agency if the respondent  
 5 is a state employee;

6 (3) respondent's employer if the respondent is  
 7 a lobbyist; or

8 (4) state agency with which the respondent has  
 9 a government contract if the respondent is a government  
 10 contractor.

11 K. If the commission finds that, based on the facts  
 12 in the investigation report and the facts alleged in the  
 13 complaint, clear and convincing evidence does not exist to  
 14 believe that the respondent's alleged conduct constituted an  
 15 ethics violation, the commission shall dismiss the complaint  
 16 and provide a report of its finding in writing to the  
 17 respondent no later than five days after the finding is made.  
 18 The report shall include findings of fact and conclusions of  
 19 law. A commission report issued pursuant to this subsection  
 20 shall not be public except upon the request of the respondent.

21 Section 8. COMPLAINTS AGAINST LEGISLATORS--REPORT TO  
 22 APPROPRIATE LEGISLATIVE ETHICS COMMITTEE.--

23 A. After investigation of a complaint against a  
 24 legislator, if the commission finds that clear and convincing  
 25 evidence exists to believe that the legislator's alleged

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1 conduct constituted an ethics violation, the commission shall  
2 issue a confidential report to the appropriate legislative  
3 ethics committee and refer the complaint to the committee.  
4 The commission shall issue a public notice that it has referred  
5 a complaint to the appropriate legislative ethics committee,  
6 but shall not disclose the name of the legislator or the nature  
7 of the complaint.

8 B. After review of the commission's report, and  
9 further investigation as the appropriate legislative ethics  
10 committee deems necessary, the committee shall publish its  
11 decision in the matter, as follows:

12 (1) if the committee decides to recommend  
13 reprimand, censure or some other action to the legislative  
14 body, the recommendation shall be made public; and

15 (2) if the committee decides that the  
16 complaint and the commission's findings do not warrant action  
17 by the legislative body, it shall issue a public report  
18 describing the general nature of the complaint, the committee's  
19 decision and the identification of the members of the committee  
20 who supported or opposed the decision. The committee shall  
21 keep the legislator's name confidential unless the legislator  
22 requests otherwise.

23 C. If the appropriate legislative ethics committee  
24 decides to investigate the matter further, it shall report the  
25 status of its investigation to the commission within ninety

1 days of receipt of the complaint and every twelve months  
2 thereafter until a final decision is made. The status report  
3 shall be confidential.

4 Section 9. COMMISSION INVESTIGATIONS--CONFIDENTIALITY.--

5 All complaints, files, records and communications collected by  
6 the commission that pertain to investigations of ethics  
7 violations are confidential and are not subject to the  
8 provisions of the Inspection of Public Records Act. The  
9 commission or any person who receives the evidence collected in  
10 a commission investigation pursuant to Section 7 of the State  
11 Ethics Commission Act shall not disclose the complaints, files,  
12 records and communications unless:

- 13 A. disclosure is required pursuant to the  
14 provisions of the State Ethics Commission Act;  
15 B. they are offered into evidence at any judicial,  
16 legislative or administrative proceeding;  
17 C. disclosure is required by law or ordered by a  
18 court; or  
19 D. the respondent files with the commission a  
20 written waiver of confidentiality.

21 Section 10. LIMITATIONS ON JURISDICTION.--

22 A. The commission shall not accept or review  
23 complaints concerning conduct that occurred more than three  
24 years prior to the day the complaint is received by the  
25 commission.

.178701.3

1           B. The commission shall not take action on a  
2 complaint filed or initiated against a candidate for public  
3 office on or after the filing date for the primary election  
4 through election day of the general election, except that the  
5 commission shall dismiss complaints that are frivolous,  
6 unfounded or outside the jurisdiction of the commission. A  
7 complainant shall be notified of this provision and shall be  
8 notified that the complainant may refer allegations of criminal  
9 conduct to the attorney general or appropriate district  
10 attorney. The respondent shall be notified that a complaint  
11 has been filed as provided in Section 7 of the State Ethics  
12 Commission Act.

13           C. The commission shall not investigate allegations  
14 of misconduct involving campaign advertisements.

15           Section 11. CONFIDENTIALITY--PENALTY.--

16           A. A person who discloses any confidential  
17 complaints, files, records or communications in violation of  
18 Section 9 of the State Ethics Commission Act is guilty of a  
19 misdemeanor and upon conviction shall be punished by a fine of  
20 not more than one thousand dollars (\$1,000) or by imprisonment  
21 for not more than one year or both.

22           B. In addition to a penalty imposed pursuant to  
23 Subsection A of this section, the court may impose a civil  
24 penalty not to exceed twenty-five thousand dollars (\$25,000)  
25 for each violation of Section 9 of the State Ethics Commission

.178701.3

1 Act.

2 Section 12. CRIMINAL VIOLATIONS--REFERRAL REQUIRED.--If  
 3 the commission finds at any time that the respondent's conduct  
 4 may amount to a criminal violation of state law, the commission  
 5 shall immediately refer the matter to the attorney general or  
 6 an appropriate district attorney. The commission shall provide  
 7 the attorney general or district attorney with all evidence  
 8 collected during its investigation that may be used in a  
 9 criminal proceeding. Nothing in this section shall prevent the  
 10 commission from taking any action otherwise provided in the  
 11 State Ethics Commission Act nor shall it prevent the commission  
 12 from deciding to hold a matter in abeyance pending referral of  
 13 a possible criminal violation of state law.

14 Section 13. COMPLAINTS AND INVESTIGATIONS--TIME  
 15 LIMITATIONS.--

16 A. If the commission has not scheduled a meeting  
 17 concerning the disposition of a complaint within ninety days  
 18 after the complaint is received or initiated by the commission,  
 19 the executive director shall, as soon as practicable, report to  
 20 the commission the progress and status of the investigation.  
 21 The commission may dismiss the complaint or instruct the  
 22 executive director to continue the investigation of the  
 23 complaint. Unless the commission dismisses the complaint, the  
 24 executive director shall report to the commission every ninety  
 25 days thereafter on the progress and status of the

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1 investigation.

2 B. Upon a dismissal or decision to continue an  
3 investigation of a complaint pursuant to this section, the  
4 commission shall notify the respondent in writing of its  
5 action. The commission shall not publicly disclose its action  
6 except upon the request of the respondent.

7 Section 14. PROHIBITED ACTIONS.--

8 A. A person shall not take or threaten to take any  
9 retaliatory, disciplinary or other adverse action against  
10 another person who in good faith:

11 (1) files a complaint with the commission  
12 alleging an ethics violation against a state official, state  
13 employee, government contractor or lobbyist; or

14 (2) provides testimony, records, reports or  
15 other information to the commission during an investigation  
16 conducted pursuant to the State Ethics Commission Act.

17 B. Nothing in the State Ethics Commission Act  
18 precludes civil actions or criminal sanctions for libel,  
19 slander or other civil or criminal claims against a person who  
20 files a false claim under that act.

21 Section 15. TEMPORARY PROVISION--REPORT ON EXTENSION OF  
22 STATE ETHICS COMMISSION JURISDICTION TO LOCAL GOVERNMENTS.--By  
23 January 1, 2011, the state ethics commission shall submit a  
24 report to the governor, the legislature and the chief justice  
25 of the supreme court regarding the extension of state ethics

.178701.3

1 commission jurisdiction to elected and appointed officials and  
2 employees of counties, municipalities and school districts.

3 The report shall include and make recommendations on:

4 A. a detailed plan formulated by the commission for  
5 implementation of an extension of its jurisdiction, including a  
6 proposed timeline;

7 B. the estimated number of additional employees and  
8 the amount and type of resources needed by the state ethics  
9 commission to carry out its powers and duties if its  
10 jurisdiction were extended;

11 C. all estimated budget increases needed and the  
12 estimated annual budget for the state ethics commission if its  
13 jurisdiction were extended; and

14 D. any changes that are needed to existing law.

15 Section 16. APPLICABILITY.--The provisions of the State  
16 Ethics Commission Act apply only to conduct that occurs on or  
17 after July 1, 2009.

18 Section 17. EFFECTIVE DATE.--

19 A. The effective date of the provisions of Sections  
20 1 through 5 and 10 through 16 of this act is July 1, 2009.

21 B. The effective date of the provisions of Sections  
22 6 through 9 of this act is January 1, 2010.